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1945.

File No B.C.S.R II/45

Legal Department

B **BRANCH**

Subject:—

Rules and Notifications under the Bombay Civil Services (New Rates of Pay) Rules

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File No B.E.S.R II/45

192-B

Gen. 194 e.

Office of the R.L.A.

'A' in the draft at page 39 was modified by R.L.A. at the express desire of the Chief Secretary who felt that in view of the proviso appearing at the ~~xx~~ end of page 40, it was unnecessary to retain the word "ordinarily" in clause (a) on page 39. The Chief Secretary also desired that "shall be" in that clause might be replaced by "is". The latter change was not very material from the drafting point of view and it was agreed to by R.L.A. There is no objection also from the drafting point of view to replacing "shall" by corresponding present tense terms in all clauses as suggested by the Chief Secretary on page 45. It is however pointed out that there is nothin wrong in the use of "shall" in such context, since the word has only an imperative sense in drafting but does not serve as the future tense. 'An Act is regarded as always speaking. Accordingly, the word "shall" should not be used in the future tense, but should be used in the imperative", (page 107) of Russell's Legislative Drafting and Forms, 4th Edition; see also page 143 of the annotated General Clauses Act, 1897; and page 206 of Craies on Statute Law.). R.L.A. would therefore suggest replacing "Is" by "shall be" in clause (a) of the draft. This would also conform to the language of rule 22 at page 19 ante.

Sd/-P.N.Moos
2-2-45

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 1035, dated 3rd February 1945.

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1. Amendment IV(2) appendix C, p. 79.- The exact intention of the proviso to new rule 16A is not clear; it is not clear what particular subject is meant by the words "that subject", and whether experience " of practical research in agricultural economics" is meant to be different from "doing research in that subject".. The P.& S.D. is requested to clarify this or, preferably, send a revised draft on the lines of rule 44 for scrutiny.

2. Amendment IV(7) at p. 81 ante.- No provision is made regarding candidates from N.E.D.Civil Engineering College, Karachi (vide clause (2) of sub-rule (4) of rule 53A) and candidates possessing a first class degree of Universities other than the Bombay University (vide clause (3) of sub-rule (4) of rule 53A). So also no provision has been made in respect of candidates who may have joined the Poona Engineering College after having done a part of the Engineering course in some other college. The P.& S.D. should clarify whether any provision is to be made in respect of such candidates.

3. Amendment IV(9) at p. ~~82~~ 81 ante.- In draft rule 72A, sub-rule (2)(c)(iii) the expressions "aftercare work" and "rescue work" may be amplified. Does the alternative for eligibility lie between "Court probation and aftercare work" rescue ~~xxxx~~ work", or between "aftercare work" and "rescue work"? The point should be clarified for settling the draft.

4. Amendment IV(11) at p. 83.- The correct word is perhaps "nomination" and not "selection". (Cf. rules 75 and 91-B). The P.& S.D. is requested to clarify.

5. Amendment IV(12) at p. 84.- The same remarks as in para. 4 apply regarding "direct recruitment". The words ~~xxxx~~ "good university education" appear to be vague. Does P.& S.D. desire that this expression should remain?

6. Amendment IV(14) at p. 84.- It is not clear what the exact intentionof the amendment is. In the amended rules 95 and 96 an age limit is prescribed, suggesting that Go-vernment ~~servants are eligible for the posts. If so,~~

servants are eligible for the posts. If so, the existing form providing that "appointment shall ordinarily be made by the nomination of a candidate", and "in exceptional cases" by promotion of an officer in service, could be preserved. It is not clear whether the post is to be normally open to any person in the Department having the requisite qualifications (other than age), and the intention is to select from among such persons (that is persons in service) and those not be service on merit, or whether persons in service are to be selected or promoted only in exceptional circumstances even if they have the requisite qualifications. The position may bemade clear.

7. Amendment IV(15) at p. 86.- The F.& S.D. is requested to consider whether a probationary period for persons promoted need be provided for, as appointments from persons already in service may be merely officiating ones.

8. Amendment V(1) at p. 86.- Attention is invited to paragraphs 4 above and 5 above. The F.& S.D. is requested to consider whether the right word should be "nomination" or "selection".

9. Amendment V(7) at p. 89 rule 71G.- If the tenure for service is of five years the appointment should not the annually renewed or, is it that the tenure is one year and that ordinarily the incumbent is to be reappointed yearly for give years? The P.&.S.D. is requested to clarify the intention.

10. Amendment V(7) at p. 89 rule 71H.- What exactly is meant by the words "higher class" should be clearly stated.

11. Amendment V(8) at p. 90.- The expression for which the letters "S.M.S." stand in draft rule 73-A should be written in full. The words "approved service" are vague. Will it not be enough to say" will be on probation"?

12. Amendment V(8) re.rule 73B at p. 91.- It is not clear what is meant by "sufficient knowledge of biology" ? The exact intention may be stated.

13. Amendment V(8) re; rule 73C at p. 91.- The words "some knowledge of English" are vague. The standard of Knowledge may be stated.

Sd/-
22-5-45
for Remembrancer of Legal Affairs.

U.R. to P.&S.D., No. 1530, dated the 22nd February 1945.